**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.**

**Writ Petition No. 943(S/S)07**

1. Sanjay Singh S/o Sri Prem Singh Bisht,
   R/o village Bartoli Patwari Circle Srikot,
   Tehsil Karanprayag, District Chamoli,
2. Upendra Singh S/o Sri Meharban Singh,
   R/o village Gwar, Patwari Circle-Bairangana,
   Tehsil and District Chamoli,
3. Rakesh Chandra Kannauji S/o Sri Hari Krishna,
   R/o village Nanna, Patwari Circle-Gandasu,
   Tehsil and District Chamoli,
4. Yashpal Singh S/o Sri Bachan Singh,
   R/o village Rawal Nagar, Patwari Circle-Gauchar,
   Tehsil Karanprayag, District Chamoli,
5. Smt. Anita D/o Sri Harsh Singh Sajwal,
   R/o village Luntara, Patwari Circle-Pharkhet (Ghat),
   Tehsil and District Chamoli, -----Petitioners.

Vs.

1. State pf Uttarakhand through Secretary Education,
   Civil Secretariat, Uttarakhand, Dehradun,
2. Director of School Education, Uttarakhand, Dehradun,
3. Principal, District Education & Trainng Institute,
   Gauchar, District Chamoli. ---- Respondents.

Sri R.P. Nautiyal, learned counsel for the petitioners.
Sri Paresh Tripathi, learned Brief Holder for State of Uttarakhand/respondents.

**Hon'ble M.M. Ghildiyal, J.**

Heard Sri R.P. Nautiyal, learned counsel for the petitioners and Sri Paresh Tripathi, learned Brief Holder for State of Uttarakhand/respondents.

The petitioners have preferred the instant writ petition for the following reliefs:-

i. Issue a writ, order direction in the nature of certiorari calling for the records and quashing the

merit list/result dated 17.07.2007 (annexure no.7 to this writ petition), issued by Principal, District Education & Training, Gauchar, District Chamoli- respondent no.3,

ii. Issue any writ, order or direction in the nature of mandamus commanding the respondent authorities to treat the candidature of petitioners in the merit list/ result dated 17.07.2007 (annexure no. 7 to this writ petition), issued by Principal, District Education & Training Institute, Gaucher, District- Chamoli- respondent no. 3 and accordingly consider the candidature of petitioners for interview in 6 months Special B.T.C. training in District Chamoli,

iii. Pass any other and further orders, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case,

iv. Award the cost of writ petition to the petitioners.

Stand of the petitioners is that in pursuance of the advertisement issued in the year 2006, they applied for Special B.T.C. Training Course. The petitioners are fully qualified to be selected for the training of Special B.T.C. Course as they passed their B.A. Examination from Hemwati Nandan Bahuguna Garhwal University and have passed their B.Ed. Degree as regular scholar in the year 2004-2005 from Chaudhary Charan Singh University Meerut. The petitioners obtain ed provisional marks-sheets on 12.05.2006 before publication of advertisement for selection in the Training of Special B.T.C. Course. In fact, the original marks-sheets were issued to the petitioners on 24.07.2006.

Though, the last date of submission of applications for Special B.T.C. Training Course was 10th August 2006 and the advertisement was published on 10.07.2006. Since there was a clause in the advertisement that on the date of publication of advertisement, the candidature must possess marks-sheet and other certificates. In these circumstances, the Principal of the concerned District Institute of Educational Training (for brevity the DIET) has not considered applications of the petitioners for selection in Special B.T.C. Training Course.

Learned counsel for the petitioners has drawn attention of the Court towards para-14 of the writ petition in which it has stated that Sri Darshal Singh S/o Sri Kunwar Singh, Dirghaya Prasad S/o Sri Manohar Prasad and Suman Purohit D/o Sri Prakash Bir Painjwal, who have also passed B.Ed. Degree in the year 2004-2005 from the similar University-Meerut and were issued marks-sheet alongwith the petitioners on the similar date, have been considered by the concerned Principal DIET district Rudraprayag whereas; candidature of the petitioners have not been considered, although they are on the similar footing. Thus the act of the respondents is a clear cut case of discrimination. It has been further stated that the persons, namely, Sri Santosh Kumar and Prem Singh have the identical case and they have been considered by the concerned DIET of district Pauri Garhwal.

In this matter, learned Standing Counsel was directed to seek instructions. Today learned Standing Counsel has submitted that the petitioners alongwith their applications, have not annexed the provisional marks-sheets, however they have submitted original marks-sheets which were issued to them on 24.07.2006 and since there was a clause in the

advertisement itself that the candidates must possess the marks-sheet of B.Ed. Degree on the date of publication of the advertisement, consequently their candidatures were not considered.

Learned Standing Counsel has submitted that it is the prerogative of the State Government to stipulate cut of date in recruitment matters which cannot be challenged by any aspirants, after having applied in pursuance thereof. I am in agreement of the arguments advanced by the learned counsel for the petitioner that it is the prerogative of the State Government to fix cut of date in recruitment matters, which is not arbitrary and has nexus to the object sought to be achieved. In the present case, in fact, there appears no question of challenging the cut of date instead the question arises that according to the advertisement, whether the candidates have in their possession the Degree and the marks-sheets issued to them is of the on or prior to the date of publication of advertisement or not? Besides it, the petitioners have made assertion in the writ petition that in the identical circumstances candidature of some aspirants were considered by the DIET of district Pauri as well as district Rudraprayag and since the candidature of the petitioners have not been considered, it is a clear case of discrimination.

Since, this Court cannot decide the disputed question of facts under Article-226 of the Constitution of India, I deem it just and proper to direct the petitioners to approach to the Secretary Education, Govt. of Uttarakhand, Dehradun for redressal of their grievances and the Secretary, Education may pass appropriate orders on the application of the petitioners, keeping in view of the observations made in the body of the

judgment, within a period of ten days from the date of production of a certified copy of this order, alongwith the representation, if any moved before him.

With these directions, the writ petition is finally disposed of. No order as to costs.

**(M.M. Ghildiyal, J.)**

August 6, 2007:

NCM: